

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1541 of 1995

with

SPECIAL CIVIL APPLICATION No 1542 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A J BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1541 of 1995
MR GIRISH PATEL for Petitioner
MR DA BAMBHANIA for Respondent No. 1
MR VB GHARANIA AGP for Respondent No. 2
2. Special Civil Application No 1542 of 1995
MR GIRISH PATEL for Petitioner
MR DA BAMBHANIA for Respondent No. 1
MR VB GHARANIA AGP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

ORAL JUDGEMENT

Petitioners in both these petitions are Sub Inspectors serving under the Director of Prohibition and Excise - respondent No. 2 herein. Petitioner in Special Civil Application No. 1541/95 was appointed as Sub Inspector on 6th November, 1989; and the petitioner in Special Civil Application No. 1542/95 was appointed as Sub Inspector on 2nd November, 1989. At the relevant time, the Rules for Departmental Examination of non-gazetted Prohibition and Excise Department [hereinafter referred to as "the 1965 Rules"] were in force. Rule 2 of the said rules provides inter-alia that every person appointed to the clerical and non-gazetted executive service as inspector or sub-inspector of prohibition and excise department shall, unless specifically exempted by the Government, be required to pass an examination in the subjects mentioned in rule 4 within two chances during the period of three years from the date of his promotion or appointment [four years in the case of scheduled tribe, scheduled caste and other backward class persons]. The first provisos to the said rules empowers the Government to give one additional chance to appear in the departmental examination to a person who fails to pass the examination within the period specified in the said rule. It further provides that no more chances shall be given to any person under any circumstances. Rule 3 provides that in case a person fails to pass the examination within number of chances allowed to him under rule 2 shall be reverted if he is a departmental promote and discharged from service if he was appointed by nomination. Rule 4 of the said rules provides, inter alia, that if the person promoted or appointed to the executive service of prohibition and excise department fails to pass the examination within the period specified in rule 2, he shall be liable to have increments falling due after the completion of the said period within which he should have passed the examination, withheld until he passes the examination at a subsequent chances, if any, given to him or until he is reverted or his services are dispensed with. Rule 5 provides for determination of seniority amongst non-gazetted prohibition and excise officers and clerks for the purpose of confirmation and promotion.

2. It is not in dispute that both the petitioners

having been appointed as Sub Inspectors of Prohibition and Excise were required to pass departmental examination specified under the 1965 Rules. Both the petitioners availed of the first chance in the month of November, 1990, however, failed to pass the said examination. Petitioner in Special Civil Application No. 1541/95 earned exemption in one of the papers, while petitioner in Special Civil Application No. 1542/95 earned exemption in two papers. Petitioner in Special Civil Application No. 1541/95 did not avail of the chance which was available to him in the month of October, 1991. Petitioner in Special Civil Application No. 1542/95 availed of the second chance in the month of October, 1991, however failed. He again earned exemption in two papers. Both the petitioners were given an additional chance under the first proviso to Rule (2) of 1965 Rules in the month of October, 1992. Petitioner in Special Civil Application No. 1541/95 earned exemption in two papers, however failed to pass the examination. Petitioner in Special Civil Application No. 1542/95 earned exemption in one paper, but failed to pass the examination. Thus, in view of provision contained in rule 3, both the petitioners were liable to be discharged from service on account of their failure to pass the departmental examination within two chances and an additional chance.

3. On 23rd December, 1992, the Government issued a Notification and framed the Rules known as the Prohibition and Excise Department [Conditions of Service Relating to Sub-Inspectors] Departmental Examination Rules, 1992 [hereinafter referred to as "the 1992 Rules"]. Said Rules have been framed in supersession of all the existing rules made in that behalf. Under Rule 3 of the said Rules, the same have been made applicable to the persons appointed as Sub Inspectors in the Prohibition and Excise Department whether by promotion or otherwise. Second Proviso to sub rule 3 of rule 1 provides that where any person has before the commencement of the said rules exhausted all the chances prescribed under the old rules for passing the examination and has accordingly failed to pass the examination, nothing in the said rules, save as expressly provided therein, shall entitle him to appear in the examination as provided in the said rules. Rule 2(g) defines old rules to mean the rules for the departmental examination of the non-gazetted Prohibition and Excise Officer and clerks of the Prohibition and Excise Department prescribed under the Government Notification dated 8th July, 1965 [i.e. the 1965 Rules]. Rule 4(3)

provides that if a direct recruit fails to pass the examination within the specified period and specified chances under the said Rules, his service shall be terminated. Rule 5 provides that the increments of the person promoted or appointed as a sub inspector shall not be withheld for failure to pass the examination and if in case of such person his increments, if any, were withheld before the appointed date for failure to pass the examination under the old Rules, they shall be released with effect from the commencement of the said Rules [i.e. 1992 Rules].

4. After coming into force of 1992 Rules, both the petitioners were permitted to take a chance to pass the examination under 1992 Rules in the month of November, 1993, however both the petitioners failed to pass the said examination. It is the claim of the petitioners that both the petitioners had earned exemption in the examination taken by them under 1965 Rules. The petitioners shall be extended the benefit of the said exemption earned by them for the examination taken by them under 1992 Rules. In the alternative, it is claimed that the petitioners be give fresh chance to take the examination as provided in 1992 Rules.

5. Neither of the above referred claims can be accepted. It is undisputed that the petitioners were required to pass the departmental examination prescribed under 1965 Rules within three years and within two chances. Both the petitioners have however failed to pass the said examination even after exhausting all the chances available to them statutory as well as discretionary. In view of the express bar under the above referred second proviso to sub Rule (3) to Rule-1, the petitioners were not entitled to take any chance to pass the departmental examination under 1992 Rules. In my view, the petitioners were given a chance to take the examination under 1992 Rules quite contrary to the above referred statutory provision. The petitioners' taking the examination under 1992 Rules, therefore, is of no consequence and the question of extending the benefit of exemption earned by them in the departmental examination under 1965 Rules does not arise, nor can the petitioners claim right to take departmental examination afresh under the 1992 Rules.

6. Both the petitions, therefore, fail. Both the petitions are dismissed. Rule in both the petitions is

discharged. There shall be no order as to costs.

JOSHI *****